

[This document to be used for Agreements over \$10,000 in value, remove before finalizing]

**AGREEMENT FOR [Insert Type of Professional Services in CAPS and BOLD] SERVICES  
[Insert Name of Consultant]**

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Consultant") (each a "Party" and collectively, the "Parties").

**RECITALS**

A. City does not have available personnel specifically trained and experienced to perform the special services required and requires the professional services of a consultant that is experienced in \_\_\_\_\_.

B. Consultant has the necessary professional skills and experience necessary to perform the services described in this Agreement.

C. City desires to engage Consultant to provide these services by reason of its qualifications and experience in performing such services

D. Consultant has submitted a proposal to City and has affirmed its willingness and ability to perform such work on the terms and manner set forth in this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work.

1.1 City retains Consultant, as an independent contractor, to perform, and Consultant agrees to render, those services (the "Services") that are described in the attached Exhibit "A," which is incorporated by this reference, pursuant to this Agreement's terms and conditions.

1.2 Consultant will control the manner and the means of the work to be performed, and be responsible for the professional quality, technical accuracy and coordination of the Services. Consultant will, without additional compensation, correct or revise any errors or deficiencies in the Services.

1.3. Consultant will keep City informed on a regular basis that the Services are being performed in accordance with the requirement and intentions of this Agreement.

1.4 If applicable, Consultant has designated those persons listed in Exhibit "A" to provide the Services to the City. Consultant will not change or reassign those persons described in Exhibit "A" without prior written notice to City, and will not replace those individuals with individuals to whom City has a reasonable objection.

2. Standard of Performance. Consultant acknowledges that in entering into this Agreement the City is relying on Consultant's special skills and experience to do and perform the Services. While performing the Services, Consultant will exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Northern California area. The acceptance of the Services by City does not release Consultant from these obligations.

Consultant will be responsible for employing or engaging all persons necessary to perform the Services. Consultant will control the manner and means of the services to be performed by its employees and subconsultants. All of Consultant's staff will be qualified by training and experience to perform their assigned tasks. Consultant will give its personal attention to the fulfillment of the provisions of this

Agreement by all of its employees and subcontractors, if any, and will keep the Services under its control. On demand of City, if any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from the Services.

3. Term. Unless earlier terminated, the term of this Agreement will commence upon the date first above written and will expire upon completion of the Services by Consultant.

4. Schedule. Consultant will generally adhere to the schedule set forth in Exhibit "A" provided, that City will grant reasonable extensions of time for the performance of the Services occasioned by unusually lengthy governmental reviews of Consultant's work product or other unavoidable delays occasioned by unforeseen circumstances; provided, further, that such unavoidable delay will not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees.

Consultant acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the Services in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound practices. Consultant will work such overtime or engage such personnel and equipment as necessary to maintain the schedule, without additional compensation.

5. Compensation.

5.1 The total fee payable for the Services to be performed during the term of this Agreement will be a not to exceed amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) as may be further specified in the attached Exhibit "A." No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the Services.

5.2 Payment will occur only after receipt by City of invoices sufficiently detailed to include hours performed, hourly rates, and related activities and costs for approval by City.

5.3 Within thirty (30) days after receipt of any applicable progress payment request, City will verify the accuracy of the request, correct the charges where appropriate, and make payment to Consultant in an amount equal to the amount of such application, as verified or corrected by City. No payment made prior to completion and acceptance of the Services will constitute acceptance of any part of the Services. City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services, or other defaults hereunder.

6. Status of Consultant. Consultant will perform the Services in Consultant's own way, by controlling the manner and means of the work City needs completed, and pursuant to this Agreement as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide the Services under this Agreement will not be considered employees of City for any purposes whatsoever.

The payment made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment, including, but not limited to, those based on any provision of the Federal Affordable Care Act, which City may be required to make on behalf of Consultant or any agent, employee, or contractor of Consultant for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Consultant.

7. Subcontracting. Consultant's services are being requested by City because they are unique and personal. Except as may be specified in Exhibit "A", Consultant will not subcontract any portion of the Services without prior written approval of City Manager or his/her designee. If Consultant subcontracts any of the Services, Consultant will be fully responsible to City for the acts, errors and omissions of Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

8. Other Consultants. The City reserves the right to employ other consultants in connection with the Services.

9. Indemnification. Consultant will hold harmless, defend and indemnify City, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this Agreement, caused in whole or in part by any act or omission of the Consultant, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.

[OR]

9. Indemnification. Consultant agrees to indemnify, including the cost to defend, City, its officers, agents, volunteers and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by City or the agents, servants, or independent contractors who are directly responsible to City, or arising from the active negligence of City.

**[THE FIRST SECTION 9 IS TO BE USED FOR NON-DESIGN PROFESSIONALS. THE SECOND SECTION 9 IS TO BE USED FOR DESIGN PROFESSIONALS. DESIGN PROFESSIONALS INCLUDE: LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYERS AND BUSINESS ENTITIES THAT PROVIDE SUCH SERVICES. PLEASE REMOVE THE SECTION 9 NOT SELECTED.]**

10. Insurance. Consultant will obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Consultant or Consultant's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."

10.1 Coverages and Limits. Consultant will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Consultant's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation and errors and omissions insurance. Consultant will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage. If Consultant believes

that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage, as Consultant deems adequate, at Consultant's sole expense.

10.1.1 Commercial General Liability Insurance. \$2,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

10.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Consultant has no employees and provides, to City's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim.

10.2 Endorsements. For Commercial General Liability Insurance, Consultant will ensure that the policies are endorsed to name the City, its officers, agents, volunteers and employees as additional insureds. Prior to City's execution of this Agreement, Consultant will furnish, to the satisfaction of the City, certificates of insurance and endorsements.

10.3 Cancellation. Insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this Agreement.

10.4 Failure to Maintain Coverage. If Consultant fails to maintain any of these insurance coverages, then City will have the option to declare Consultant in breach of this Agreement, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Consultant is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Consultant or deduct the amount paid from any sums due Consultant under this Agreement.

10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

10.6 Primary Coverage. For any claims related to the Services and this Agreement, the Consultant's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Consultant's insurance and not contributory with it.

10.7 Reduction in Coverage/Material Changes. Consultant will notify City in writing pursuant to the notice provisions of this Agreement thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.

10.8 Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

11. Business License. Consultant will obtain and maintain a City of Brentwood Business License for the term of the Agreement, as it may be amended from time-to-time.

12. Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of

records and any other documents created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

13. Ownership of Documents.

13.1 All product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of City. In the event this Agreement is terminated, all Work Product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement. Consultant will have the right to make one (1) copy of the Work Product for Consultant's records.

13.2 The Work Product may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable, without further employment of or payment of any compensation to Consultant; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another consultant to use, the Work Product, City agrees to hold Consultant harmless from any and all liability, costs, and expenses relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Work Product. Consultant will not be responsible for deficiencies solely attributable to modifications of the Work Product performed by others, or that arise from use of the Documents in connection with a project or site other than that shown in the Work Product.

14. Copyrights. Consultant agrees that all copyrights that arise from the Services will be vested in City and Consultant relinquishes all claims to the copyrights in favor of City.

15. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of the Services pursuant to the Agreement are confidential until released by the City to the public, and the Consultant will not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

16. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Brentwood  
150 City Park Way  
Brentwood, CA 94513  
Phone No. (925) \_\_\_\_\_  
Facsimile No. (925) \_\_\_\_\_  
Attn: \_\_\_\_\_

For Consultant:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Attn: \_\_\_\_\_

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

17. Conflicts of Interest.

17.1 City will evaluate Consultant's duties pursuant to this Agreement to determine whether disclosure under the Political Reform Act and City's Conflict of Interest Code is required of Consultant or any of Consultant's employees, agents, or subcontractors. Should it be determined that disclosure is

required, Consultant or Consultant's affected employees, agents, or subcontractors will complete and file with the City Clerk those schedules specified by City and contained in the Statement of Economic Interests Form 700.

17.2 Consultant understands that its professional responsibility is solely to City. Consultant warrants that it presently has no interest, present or contemplated, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Consultant further warrants that neither Consultant, nor Consultant's agents, employees, subcontractors and consultants have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Consultant will file with the City an affidavit disclosing this interest. Consultant will not knowingly, and will take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If after employment of a person, Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant will promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

18. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of the Services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

19. Discrimination and Harassment Prohibited. Consultant will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

20. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Consultant in writing pursuant to the notice provisions of this Agreement. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Consultant has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Consultant, whether located at the project site, at Consultant's place of business, or at the offices of a subconsultant.

Either Party, upon tendering thirty (30) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

21. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. Claims And Lawsuits. By signing this Agreement, Consultant agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Consultant acknowledges that if a false claim is submitted to City by Consultant, it may be considered fraud and Consultant may be subject to

criminal prosecution. Consultant acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act, applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Consultant acknowledges that the filing of a false claim may subject Consultant to an administrative debarment proceeding as the result of which Consultant may be prevented to act as a Consultant on any public work or improvement for a period of up to five (5) years. Consultant acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

23. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.

24. Testimony. Consultant will testify at City's request if litigation is brought against City in connection with Consultant's services under this agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City, upon prior written agreement with Consultant will compensate Consultant for time spent in preparation for testimony, testimony, and travel at Consultant's standard hourly rates at the time of actual testimony.

25. Successors and Assigns. It is mutually understood and agreed that this Agreement will be binding upon the Parties and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Consultant without the prior written consent of City, which will not be unreasonably withheld.

26. Section Headings. Section headings as used in this Agreement are for convenience only and will not be deemed to be a part of such sections and will not be construed to change the meaning of the section.

27. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

28. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

29. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

30. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

CONSULTANT:

CITY:

\* By: \_\_\_\_\_

By: \_\_\_\_\_

Gustavo "Gus" Vina, City Manager

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\*\* By: \_\_\_\_\_

By: \_\_\_\_\_

Margaret Wimberly, City Clerk

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Damien Brower, City Attorney

If required by City, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**\*Group A.**

Chairman,  
President, **or**  
Vice-President

**\*\*Group B.**

Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

If an LLC:

- The Agreement must be signed by a Managing Member **or** the LLC must attach a resolution empowering the signatory to bind the LLC.

If a partnership:

- The Agreement must be signed by the Managing Partner **or** the Partner authorized to execute agreements of this type. Additional documentation, such as the partnership agreement, confirming this signature authority may be required.

If a sole proprietorship:

- The Agreement must be signed by the owner.



**EXHIBIT "A"**

**SCOPE OF SERVICES**

Itemized List of what Consultant will do for City and at what price and schedule and name(s) of designated persons.